

**Notice of Allowability**

Application No.

10/780,082

Examiner

Katherine W. Mitchell

Applicant(s)

O'BANION ET AL.

Art Unit

3677

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to interview 8/10/05.
2. ☒ The allowed claim(s) is/are 85-110.
3. ☒ The drawings filed on 4/21/2005 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material

5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 20050810.
7. ☒ Examiner's Amendment/Comment *includes RFA*
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
2. Authorization for this examiner's amendment was given in a telephone interview with Jeff Urian on Aug 9-10, 2005.
3. The application has been amended as follows:

#### **IN THE CLAIMS:**

Claim 85 line 9 has been amended to insert --in a relaxed and unstressed state-- immediately after "elongated segments".

Claim 85, line 5, has been amended to delete "and flange segments" and insert -segment and also nonparallel to said flange segment--.

Claim 85, line 8, has been amended to delete "and flange segments" and insert -segment and also nonparallel to said flange segment--.

Claim 92, line 5, has been amended to delete "and flange segments" and insert -segment and also nonparallel to said flange segment--.

Claim 92, line 8, has been amended to delete "and flange segments" and insert -segment and also nonparallel to said flange segment--.

In claim 91, line 2, --pair of-- has been inserted immediately before "angular segments" AND --pair of-- has also been inserted immediately before "flange segments".

Claim 104, line 3 has been amended to insert --in a relaxed and unstressed state-- immediately after "elongated segments".

Claim 104, line 6 has been amended to insert --unstressed-- immediately before "nail".

4. The following is an examiner's statement of **reasons for allowance**:

Regarding independent claims 85 and 104, the closest prior art is Tanaka USP 4112815. Tanaka is clear in col 2 lines 39-68 that the fastener has a relaxed state with the elongated legs spread apart from each other and non-parallel, and the head portions 3a and 3b are directly adjacent to each other and parallel to angular portions 1a and 1b, (above the elongated legs 5a and 5b), said angular portions are parallel to each other and directly adjacent each other. Thus Tanaka does not have the elongated segments, in a relaxed and unstressed state, substantially parallel to each other and forming a tip, nor would it work if it did.

Regarding Independent claim 92, it requires a nail with 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> members such that a driving force to the head of the 3<sup>rd</sup> member drives all 3 members thru the framing members/panels and causes outward expansion of 1<sup>st</sup> and 2<sup>nd</sup> members. Referring to USP 3213745, Figs 1-3, examiner seriously considered whether or not 18 and 19 (as 1<sup>st</sup> and 2<sup>nd</sup> members), and screw 20 (as third member) could read on the claim. However, examiner has used fasteners very similar, and is confident that anyone trying to insert all three members together, even with a predrilled hole, will find this shortcut of simultaneous insertion will not work. 1<sup>st</sup> and 2<sup>nd</sup> members must be inserted first, and then the 3<sup>rd</sup> member (screw) can be inserted to expand them - as shown in the

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Figures. Examiner has used both metal and plastic anchors as the 1<sup>st</sup> and 2<sup>nd</sup> members, and the result is the same - they must be inserted prior to the 3<sup>rd</sup> member being driven in or they end up damaged and unusable. Examiner has even tried to substitute a nail for the threaded 3<sup>rd</sup> member 20, and then withdrawn the nail and inserted a screw - this too does not work. The elongated sections must be very very close together to be successfully inserted and then expanded by a 3<sup>rd</sup> member, and thus the reference is not capable of meeting all the claim functional limitations.

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine W. Mitchell whose telephone number is 571-272-7069. The examiner can normally be reached on Mon - Thurs 10 AM - 8 PM.

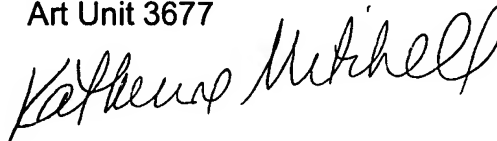
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

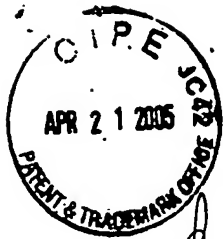
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7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

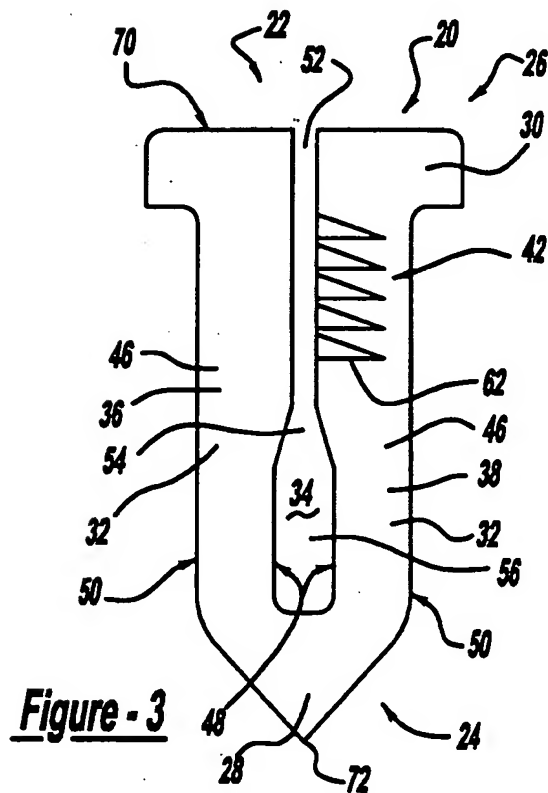
KWM  
8/10/2005

Katherine W Mitchell  
Examiner  
Art Unit 3677

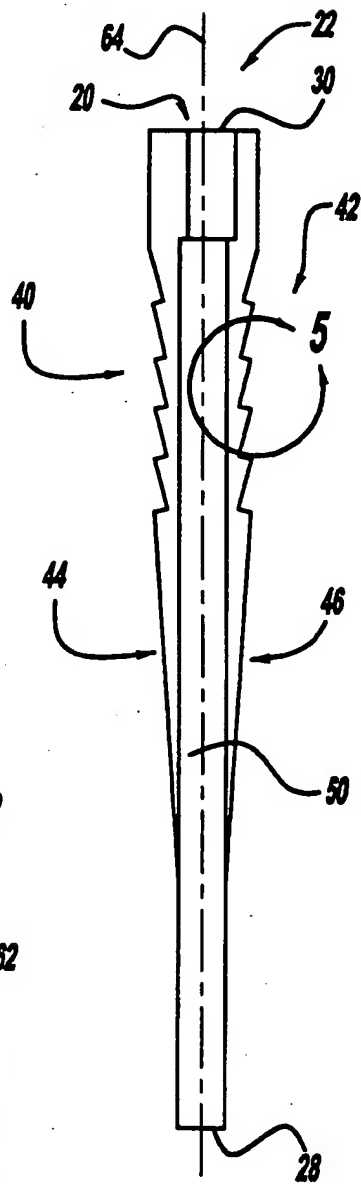
A handwritten signature in cursive script, reading "Katherine W Mitchell", written in black ink.



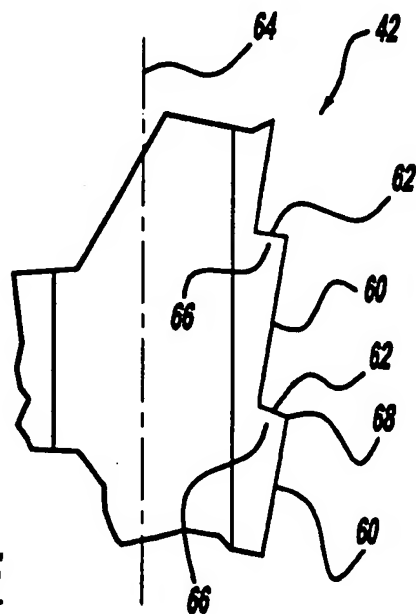
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**Figure - 3**



**Figure - 4**



**Figure - 5**

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**Figure - 11**